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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 02 267 51826 Office: NEBRASKA SERVICE CENTER Date: MAR 30 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and subsequently dismissed by the Administrative Appeals Office (AAO) for failing to provide any additional evidence on appeal to overcome the decision of the director. Upon receipt of additional information, it appears that counsel for the petitioner did submit additional evidence timely. Therefore, the matter will be reopened on CIS motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The appeal will be dismissed.

The petitioner is an office supply retail business that seeks to employ the beneficiary as a "market retention cost administrator." The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a "market retention cost administrator." Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 14, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would **perform** duties that entail: examining and analyzing the petitioner's budget to improve efficiency and increase profits; formulating merchandising policies and coordinating merchandising activities; identifying the demand for products and identifying potential markets; monitoring sales trends to determine the need for new products and services; and assisting with the management of the petitioner's daily operations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business, economics, administration, accounting, marketing, statistics, or a related field.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the petitioner has satisfied all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the proffered position encompasses the duties of budget analysts, purchasing managers, marketing managers, and sales worker supervisors.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position qualifies as a specialty occupation. Counsel's assertion that the proffered position encompasses the duties of budget analysts, purchasing managers, marketing managers, and sales worker supervisors is noted. No evidence in the *Handbook*, 2006-2007 edition, indicates that a baccalaureate or higher degree in a specialty is required for these positions. A wide range of educational backgrounds is suitable for entry into budget analyst, purchasing manager, marketing manager, and sales worker supervisor jobs. Further, the petitioner's October 9, 2002 letter indicates that the petitioner has a total of 12 employees, including two employees with "marketing" duties, an accounting manager, a distribution manager, an administrative manager, and a general manager. Upon review of the petitioner's organizational chart and the proposed duties of the proffered position, it is not clear how the beneficiary's marketing-related duties differ from the duties of the petitioner's other two "marketing" employees. Accordingly, the petitioner's organizational hierarchy is unclear.

On appeal, counsel submits letters from six businesses and asserts that these letters establish the proffered position as a specialty occupation under the first prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the degree requirement is common to the industry in parallel positions among similar organizations. The AAO does not agree.

One of the letters is from the president and CEO of [REDACTED] who states, in part, that he looks for a bachelor's or master's degree in business, marketing, ergonomics, economics, accounting & finance, statistics, and computer-related fields, but a course of study with some related coursework can be substituted. He goes on to say that 50 percent of his staff has a college degree and 70 percent of his staff has at least some college courses. This does not prove that the petitioner's degree requirement is the norm within its industry.

Another letter is from the president of [REDACTED] who states, in part, that he has an advanced degree and performs the sales and marketing end of his business. The president of the organization would presumably have increased responsibilities in running the organization in addition to performing the duties described in the proffered position. The record does not establish that position of president of this business is similar to that of the proffered position. Again, this does not prove that the petitioner's degree requirement is the norm within its industry.

Another letter is from the president of [REDACTED] who states, in part, that his retail manager holds a bachelor's degree in business. He does not state, however, that any of his positions require a bachelor's degree. Again, this does not prove that the petitioner's degree requirement is the norm within its industry.

The writers of the remaining letters all assert, in part, that the positions such as the proffered position require a related bachelor's degree. The writers, however, do not provide any evidence in support of their assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for a variety of positions including, in part, budget analysts, purchasing and logistics managers, marketing managers, account managers, and research and development project coordinators in numerous industries. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. In addition, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the advertised positions. Thus, the advertisements have no relevance.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that, although the proffered position is a new position, the petitioner's employees "currently in any decision-making type position all have degrees." A review of the evidence of record, which includes copies of resumes and degrees, reflects that the petitioner's employees

hold degrees in a variety of fields, including biology and physical education, thereby confirming the position of the DOL in its *Handbook*, namely that a wide range of educational backgrounds is suitable for entry into budget analyst, purchasing manager, marketing manager, and sales worker supervisor jobs. The evidence of record, therefore, does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.